

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

_____)	
UNITED STATES SECURITIES)	
AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:15-cv-659-JMS-MJD
)	
VEROS PARTNERS, INC,)	
MATTHEW D. HAAB,)	
JEFFERY B. RISINGER,)	
VEROS FARM LOAN HOLDING LLC,)	
TOBIN J. SENEFELD,)	
FARMGROWCAP LLC,)	
PINCAP LLC, and)	
)	
Defendants,)	
)	
PIN FINANCIAL LLC,)	
)	
Relief Defendant.)	
_____)	

**RECEIVER’S MOTION FOR AUTHORITY TO MAKE INTERIM
DISTRIBUTIONS TO INVESTORS OF VEROS FARM LOAN HOLDING LLC
AND FARMGROWCAP LLC**

William E. Wendling, Jr., the Receiver herein, by counsel, respectfully requests the Court grant him authority and approval of this plan for interim distribution of Three Million Dollars (\$3,000,000.00) to investors of Veros Farm Loan Holding LLC and FarmGrowCap LLC. In support of this motion, the Receiver states as follows:

1. On April 22, 2015, the Plaintiff, Unites States Securities and Exchange Commission (“SEC”) filed its Complaint [[Filing No. 1](#)] in this action and a motion for temporary restraining order, asset freeze and other relief [Filing No. 3]. Thereafter, the Court entered a Temporary Restraining Order [[Filing No. 12](#)].

2. On May 1, 2015, the Agreed Order Appointing Receiver (“Agreed Order”) was entered appointing William E. Wendling, Jr. to serve without bond as the Receiver over Veros Farm Loan Holdings LLC (“VFLH”), FarmGrowCap LLC (“FarmGrowCap”), PinCap LLC (“PinCap”), and all private offerings in which Defendant Veros Partners controls investor funds (“Private Offerings”) [[Filing No. 34](#)].

3. The Agreed Order charges the Receiver with the responsibility to:

To manage, control, operate and maintain the Receivership Estates and hold in his possession, custody and control all Receivership Property, pending further Order of this Court;

To use Receivership Property for the benefit of the Receivership Estates, making payments and disbursements and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver;

To take any action which, prior to the entry of this Order, could have been taken by the officers, directors, partners, managers, trustees and agents of the Receivership Defendants;

To take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property;

To take such other action as may be approved by this Court.

Agreed Order Appointing Receiver [[Filing No. 34, at ECF p. 5](#)]

4. The Receiver requested authority to authority to hire Blue & Co., LLC to assist with, among other things the administration, analysis and ongoing monthly accounting and bookkeeping of the businesses of the Receivership Defendants; to prepare monthly reports to the investors/lenders; to assist with the review and analysis of the Receivership Defendants internal accounting records for accuracy and completeness and of the internal investor/lender records; to prepare reports and conclude on findings regarding the Receivership Estates; and to perform

other ongoing business services required to maintain and operate the Receivership Estates during the pendency of this matter [[Filing No. 74](#)].

5. Based upon the allegations contained in the Complaint that 2013 investor funds were used to pay off earlier farm loan offerings without appropriate disclosures and the “roll over” of a 2013 short fall to 2014 offerings, again without appropriate disclosures, the Receiver instructed Blue & Co. to perform a forensic examination of the books and records of VFLH and FarmGrowCap as well as each individual investor account for the years 2012, 2013, and 2014. The examination is now substantially complete.

6. FarmGrowCap investors were due Eight Million Six Hundred Seventy-Five Thousand Eight Hundred Nineteen and 43/100 Dollars (\$8,675,819.43) as of April 25, 2015, the date of filing. As of the same date, the FarmGrowCap bank accounts had a balance of only One Hundred Twelve Thousand, One Hundred Twenty-Eight and 82/100 Dollars (\$112,128.82). Over the past fourteen (14) months, the Receiver has been actively pursuing the collection of monies owed to VFLH and FarmGrowCap by delinquent farm borrowers and other sources. As a result of the collection efforts, the Receiver currently has more than Three Million Five Hundred Thousand Dollars (\$3,500,000.00) in the FarmGrowCap Receivership account.

7. In addition, the Williams Farm settlement could add another Two Million Five Hundred Ninety-Two Thousand Eight Hundred Seventy-Six Dollars (\$2,895,876.00) via the installment payment portion of the agreement [[Filing No. 195](#)], if all future payments are made. The Receiver anticipates collecting additional amounts over the next few months from miscellaneous sources. However, before future receivership fees and expenses, the total anticipated recovery is not expected to exceed Six Million Five Hundred Thousand Dollars (\$6,500,000.00).

8. The Receiver's Proposed Distribution Plan will take place in three (3) phases:

a. The Receiver will contact each investor individually to summarize and provide from the accounting review the:

- amount invested in VFLH or FarmGrowCap;
- payments received; and
- remaining amount of each investor's capital.

Investors will be requested to respond within thirty (30) days and provide any supporting documentation to outline/identify any discrepancy or dispute related to their contributions or payment received. After this period of time, any discrepancies or disputes which the Receiver cannot resolve will be reported to SEC and to the Court. (Phase I)

b. The Receiver will next contact each investor and provide them with calculation of their *pro rata* share (principal contributions less payments received) of the total invested capital, as well as the amount the Receiver proposes to distribute to them in this preliminary distribution. The Receiver will count payments to investors as a return of principal, not the payment of interest owed, and will properly account for any transfers of investor funds from VFLH to FarmGrowCap. Also, the Receiver will begin contacting other investors who were paid using the contributions of VFLH and FarmGrowCap investors and attempt to recover those funds. Investors will be requested to raise any objections to the calculation or amount of their proposed distribution within thirty (30) days. (Phase II)

c. After considering any objections from investors, and consulting with the SEC, the Receiver will then file an explanation of his accounting methodology and a schedule showing each of the proposed preliminary payments with the Court. The Receiver also will file or describe in its filing any unresolved investor objections, and provide a response to each of those objections, along with a request for a hearing on the Receiver's proposed preliminary distribution. The Receiver will not make any distributions without Court approval. (Phase III)

9. Although the Receiver has not completed the work requested by the SEC and ordered by the Court, he has marshalled a significant amount of money which could be returned to investors without jeopardizing the future activities of the receivership or the assets he is managing. Accordingly, the Receiver proposes to return to investors \$3 million of the approximately \$3.5 million in the Receiver's possession through a preliminary distribution.

10. In supervising an equitable receivership, a district court's primary responsibility is to ensure that any proposed plan of distribution is fair and reasonable. See [S.E.C. v. Wealth Mgmt. LLC](#), 628 F.3d 323, 332 (7th Cir. 2010). Where, as here, investor contributions were commingled and the amount recovered falls far short of amounts owed to investors, the court may in its discretion determine that the most equitable way to compensate investors is by *pro rata* distribution. [Id.](#) at 333 (using doctrine of equitable subordination to treat all investor claims equally). *But see* [S.E.C. v. Huber](#), 702 F.3d 903, 906–07 (7th Cir. 2012) (approving distribution which disfavored investors who withdrew funds before exposure of fraudulent scheme).

11. Here, the contributions of investors in VFLH and FarmGrowCap were commingled and, and despite the Receiver's best efforts, the amount of assets available for distribution are far less than the amounts owed to investors. Accordingly, the Receiver proposes to make a preliminary distribution to VFLH and FarmGrowCap investors based on their respective *pro rata* share of the total principal amount owed to investors.

12. Each investor will be notified of this filing. As explained in paragraph 8, *supra*, if any new information is provided to and verified by the Receiver within the time permitted, that information will be incorporated in the Receiver's calculations for a preliminary distribution (Phase I). Next, each investor will be informed of their proposed *pro rata* share and distribution amount, and will have the opportunity to question or object to that calculation. (Phase II) Then, the Receiver will submit his proposed distributions and an explanation of his accounting methodology to the Court, along with any unresolved objections and his response to those objections, and request a hearing on his proposed preliminary distribution. (Phase III)

13. Any preliminary or final distributions of funds would require the Court's approval, and investors will be provided with written notification and an opportunity to be heard before any action is taken which affects their interest.

14. Counsel for the United States Securities and Exchange Commission has reviewed this motion and has no objection to this request.

WHEREFORE, the Receiver, by counsel, requests that this Court enter an order authorizing the Receiver to make a *pro rata* interim distribution to the FarmGrowCap investors in the amount of Three Million Dollars (\$3,000,000.00), and for all other proper relief.

Respectfully submitted,

By *s/Anne Hensley Poindexter*

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Counsel for the Receiver

Certificate of Service

I hereby certify that on August 19, 2016, a copy of the foregoing *Receiver's Motion for Authority to Make Interim Distributions to Investors of Veros Farm Loan Holdings LLC and FarmGrowCap LLC* was filed electronically. Notice of this filing will be made on all ECF-registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Anne Hensley Poindexter

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SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

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VEROS PARTNERS, INC,
MATTHEW D. HAAB,
JEFFERY B. RISINGER,
VEROS FARM LOAN HOLDING LLC,
TOBIN J. SENEFELD,
FARMGROWCAP LLC,
PINCAP LLC, and

Defendants,

PIN FINANCIAL LLC,

Relief Defendant.

**ORDER AUTHORIZING RECEIVER TO MAKE INTERIM
DISTRIBUTION TO INVESTORS OF VEROS FARM LOAN HOLDING LLC
AND FARMGROWCAP LLC**

WHEREAS this matter has come before this Court upon the Receiver’s Motion for authority to make interim distributions to the investors of Veros Farm Loan Holding LLC and FarmGrowCap LLC and,

WHEREAS the Court finds that although the Receiver has not completed all of the work requested by the SEC and ordered by the Court, he has marshalled significant funds which could be returned to the investors without jeopardizing the future activities of the receivership or assets he is managing; and

WHEREAS, the Court finds that the Receiver's request to make an interim distribution to the investors of Veros Farm Loan Holding LLC and FarmGrowCap LLC in accordance with the plan set forth in his motion is reasonable,

IT IS THEREFORE ORDERED THAT: The Receiver's Motion for authority to make interim distributions to the investors of Veros Farm Loan Holdings LLC and FarmGrowCap LLC is hereby approved, and

1. The Receiver's Proposed Distribution Plan is approved; and
2. Prior to making any distributions, the Receiver shall file an accounting methodology and a schedule showing the proposed preliminary payments with the Court for approval.

Dated: _____

Honorable Jane Magnus-Stinson, Judge
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

Distribution:

All ECF-registered counsel of record via email generated by the court's ECF system